

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41379
Docket No. MS-41499
12-3-NRAB-00003-100250**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Marion Wilburn, Christopher Rowe, Joseph A. Williams
(and Wito Mercardo

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“This is to serve notice, as required by the June 23, 2003 Uniform Rules of Procedure of the National Adjustment Board [sic] of our intention to file a Submission within 75 days covering an unadjusted dispute between Marion Wilburn, Christopher Rowe, Joseph Williams, and Wito Mercardo against CSX Transportation 500 [Water] Street, Jacksonville, FL 32254 involving the following:

The placement of Mr. Dave Hofer ahead of us on the Electronic Signal Specialist seniority roster, on the Jacksonville Division. (Jacksonville, Florida) (With Union Local 16 BRS)

Marion Wilburn
(Mailing Address omitted)

Christopher Rowe
(Mailing Address omitted)

Joseph A. Williams
(Mailing Address omitted)

Wito Mercado
(Mailing Address omitted)”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On December 10, 2009, through retained Counsel A. J. Thomas, Electronic Signal Specialists (ESS) J. A. Williams and M. Wilburn submitted a claim to the Carrier's Labor Relations Department asserting that their seniority rights had been violated by being placed below Mr. D. L. Hofer on the Jacksonville point seniority roster dated November 26, 2009. On their behalf, the Petitioners' attorney set forth his understanding that because Hofer was not on a leave of absence at the time the Decentralization Agreement was executed, but was working on the Chicago Division, where he established seniority, he was nonetheless carried on the Jacksonville list ". . . as if he had never been carried on the Chicago terminal seniority roster." The Petitioners' Counsel requested that his clients be restored to their proper places on the roster.

By letter dated February 8, 2010, Director Labor Relations N. V. Nihoul responded to attorney Thomas, explaining the somewhat unusual circumstances surrounding the seniority status of Hofer relative to that of the Petitioners. According to Nihoul:

"Mr. Hofer established ESS Seniority on the former SCL on October 6, 1999. Prior to the decentralization of the Jacksonville Dispatch Center, Mr. Hofer applied for an ESS vacancy in the Chicago Office. Based on the 1999 Agreement that established the Chicago Dispatch Office (the Calumet City Agreement), CSXT and

the BRS signed an Agreement that allowed Jacksonville ESS's priority of assignment based on qualifications established in Jacksonville, and as part of that Agreement, any existing Signal Department employee who was assigned to a vacancy or new position established in Chicago was to be treated as being on a leave of absence on their former property and were allowed to retain their former seniority(s)."

Additionally, Nihoul stated, Hofer had properly held seniority on two ESS rosters during negotiations between the BRS and the Carrier over the decentralization of the Jacksonville office. Accordingly, ". . . he was entitled to be Identified as a Jacksonville ESS whose work was to be divested to satellite offices." Thus, Nihoul stated, ". . . because Mr. Hofer retained SCL ESS seniority, and since that seniority was superior to his Chicago seniority, his oldest date in the class prevailed for the purpose of the implementing Agreement and he was listed as such on the relative ranking list for future vacancies in the satellite offices."

The record reflects that approximately three months later, on May 5, 2010, individual Petitioners Wilburn and Williams sent to the Board and to the Carrier written notice of their intent to file a Submission for adjudication of their dispute by the Third Division. The record reflects that in the process of doing so, they added two individual Petitioners, Messrs. Rowe, and Mercado.

In this proceeding, the Carrier reiterates its basis for declining the claim on its merits as stated in its February 8, 2010 response to Counsel, noting that the Petitioners' Organization concurs with that position. Additionally, the Carrier asserts procedural objections which it argues deprive the Board of jurisdiction to decide the case. Specifically, the Carrier first contends that the dispute was improperly progressed by the addition of two Petitioners after filing. Secondly, it argues that the Petitioners failed to request a conference on the property before listing the claim for adjudication before the Board.

Based upon our careful review of the authority cited by the Carrier, the Board finds that both of the Carrier's procedural objections are well-founded. First, it is well established that attempts to modify, supplement or augment claims post-handling are not permitted. See Third Division Award 36020 wherein the

Board held: "As the Carrier contends, amending an appeal during on-property proceedings is a fatal error, rendering the claim procedurally defective and requiring its dismissal by the Board." Secondly, the Railway Labor Act, arbitral precedent, and relevant judicial authority hold that failure to conference a claim on the property, without more, will support dismissal without consideration of the merits. See, e.g., Third Division Award 37134 wherein the Board held: "Board precedent supports the dismissal of a claim without any consideration of the merits when the claim has not been conferenced on the property." We note in passing that had the claim been properly conferenced as required, it might have provided an opportunity for the kind of comprehensive examination of the Carrier's grounds for rejecting the claim that would have satisfied the individual Petitioners and their Counsel.

Because the Board lacks subject matter jurisdiction in this instance, the claim must be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 2012.